

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

October 3, 2005

In Reply Refer To:
La Paloma Generating Company, LLC
Docket Nos. ER00-107-001,
ER00-107-002,
ER01-107-003, and
ER01-107-004

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Dear Mr. O'Donnell:

1. On March 31, 2005, as amended on August 5, 2005, La Paloma Generating Company, LLC (La Paloma) filed an updated market power analysis pursuant to the Commission's order issued on May 13, 2004.¹ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.² La Paloma also filed tariff revisions containing the Commission's market behavior rules³ and change in status reporting

¹ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The Commission granted La Paloma market-based rate authority in *La Paloma Generating Co., LLC*, 89 FERC ¶ 61,202 (1999). On December 14, 2001, La Paloma submitted an updated market power analysis in Docket No. ER00-107-001, which is addressed in this order.

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

requirement as required by Order No. 652.⁴ La Paloma's updated market power analysis and revised market-based rate tariff are accepted for filing.⁵ As discussed below, the Commission concludes that La Paloma satisfies the Commission's standards for market-based rate authority.

2. La Paloma, a Delaware limited liability company, owns and operates a 1,200 MW combined-cycle, natural gas-fired generating facility located near the town of McKittrick, California (the Project) that is interconnected to Pacific Gas and Electric Company's (PG&E) transmission system. La Paloma is an exempt wholesale generator that is authorized to sell power at market-based rates. La Paloma has entered into an asset management agreement and operations and maintenance agreement with DTE La Paloma Operations, LLC (La Paloma Operations), a subsidiary of DTE Energy Company and an affiliate of the Detroit Edison Company, under which La Paloma Operations provides operations and maintenance service to La Paloma.

3. La Paloma states that it is currently owned by a syndicate of lenders that indirectly hold minority, non-controlling interests in La Paloma.⁶ La Paloma states that the lenders are banks, institutional investors, financial institutions, investment companies or related entities that are not primarily engaged in energy related business activities. La Paloma states that for the purpose of the market power analysis the following lenders that hold a five percent or greater direct or indirect equity interest in La Paloma were treated as affiliates: Calyon, New York Branch; Citibank, N.A. (Citibank); Deutsche Bank AG; National Australian Bank Limited; and Société Générale (collectively, the Current Affiliates). La Paloma clarifies that the Current Affiliates have minority interests in La Paloma that do not convey control over the Project.

4. La Paloma states that its Current Affiliates hold five percent or greater non-controlling, non-management, equity interests in the Harquahala Generating Company, LLC, and Chehalis Power Generating, L.P., both of which commenced commercial operation after July 9, 1996. In addition, La Paloma states that Citibank is scheduled to shortly acquire a more than five percent equity interest in Panda Gila River, L.P. (Panda

⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁵ La Paloma Generating Company, LLC First Revised FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5, (Superseding FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5).

⁶ La Paloma states that all information regarding La Paloma's affiliates was provided by the lenders and that La Paloma has confirmed that this information is accurate and complete.

Gila River), which owns a 2,300 MW generating facility which also commenced commercial operations after July 9, 1996.⁷ Also, La Paloma states that the Current Affiliates indirectly own interests in power marketers which have been granted market-based rate authority.

5. On March 24, 2005, in Docket No. EC05-62-000, La Paloma and La Paloma Holding Company, LLC filed an application under section 203 of the Federal Power Act seeking Commission authorization for: (1) the transfer of ownership or control of certain specified indirect equity interests in La Paloma;⁸ (2) the future transfer of ownership or control of indirect equity interests in La Paloma within a period of two years from the date of the Commission's order so long as the acquiring party's equity interests (either individually or in combination with its affiliates) is 20 percent or less; and (3) the future transfer of equity interests in La Paloma by creditors to wholly-owned direct or indirect subsidiaries of such creditor's ultimate parent company. The Commission approved this application.⁹

6. On November 23, 2004, La Paloma filed a notice of a change in status to identify a departure from the facts relied upon by the Commission in the grant of market-based rate authority to La Paloma. The change in status resulted from the transfer of the upstream ownership interests in La Paloma to the creditors described herein.

7. La Paloma states that it was previously owned by National Energy & Gas Transmission, Inc., an affiliate of PG&E, a traditional electric utility. La Paloma's December 14, 2001, updated market power analysis was filed as a part of a group of entities owned by PG&E, with whom La Paloma is no longer affiliated.¹⁰

⁷ We note that the transaction was consummated on June 1, 2005, as reported by Gila River Power, L.P. in its change in tariff and notice of succession filing under Docket No. ER05-1178-000.

⁸ Certain existing owners of equity interests in La Paloma Holding, LLC sought to transfer their debt and associated equity interests to Bear, Stearns & Co. Inc., Scottwood Partners, LP., Basso Multi-Strategy Holding Fund Ltd., Longacre Master Fund, Ltd., Longacre Capital Partners (QP), L.P., Silver Oak Capital, LLC, and TRS Callisto LLC, which are banks, institutional investors, financial institutions, investment companies or related entities.

⁹ *La Paloma Generating Company, LLC*, 112 FERC ¶ 62,052 (2005).

¹⁰ *See La Paloma Generating Trust Ltd. et al.*, 107 FERC ¶ 62,179 (2004). The transfer was consummated on October 27, 2004.

8. La Paloma states that for the purpose of the market power analysis, it has also included the affiliates that La Paloma would acquire within the CAISO market. Those affiliates would be: Bear, Sterns & Co. Inc. and Silver Oak Capital, L.L.C. (collectively, New Affiliates). La Paloma further states that the New Affiliates and their affiliates do not own or control equity interests in any facilities that are used for the generation, sale, distribution or transmission of electric energy in the CAISO market.

Procedural Matters

9. Notice of La Paloma's March 31, 2005 filing, as amended on August 5, 2005, was published in the *Federal Register*, 70 Fed. Reg. 20,368 (2005), with motions to intervene and protests due on or before April 21, 2005 and August 26, 2005. None was filed.

10. Notice of La Paloma's November 23, 2004 notice of change in status filing was published in the *Federal Register*, 69 Fed. Reg. 71,027 (2004), with motions to intervene and protests due on or before December 14, 2004. None was filed.

11. Notice of the December 14, 2001, updated market power analysis filed by La Paloma and other then-affiliated applicants was issued on December 20, 2001, with comments, protests, and interventions due on or before January 4, 2002. Massachusetts Municipal Wholesale Electric Company (MMWEC) filed a timely motion to intervene and protest. Specifically, MMWEC expressed concern that La Paloma and the other applicants in the December 14, 2001 updated market power analysis had not performed the Supply Margin Assessment screen and provided only "minimal information" in its place, and argued that, as a result, there was no evidentiary basis for the Commission to consider the possible market power of certain PG&E generating facilities in New England. On January 17, 2002, La Paloma (and the other then-affiliated applicants) filed a motion for leave to file answer and answer to MMWEC's protest.

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of MMWEC serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept La Paloma and the other then-affiliated Applicants' answer and will, therefore, reject it.

13. With regard to the protest filed by MMWEC in response to the December 14, 2001 updated market power analysis, we note that the Commission has replaced the SMA analysis with two indicative screens for assessing generation market power, as discussed in the April 14, May 13, and July 8 Orders. Additionally, La Paloma is no longer

affiliated with PG&E. Further, MMWEC's protest was directed at generating facilities in New England, outside of La Paloma's relevant geographic market.

Market-Based Rate Authorization

14. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹¹ As discussed below, the Commission concludes that La Paloma satisfies the Commission's standards for market-based rate authority.

15. In its April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.

16. La Paloma cites section 35.27 of the Commission's regulations which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.¹² Further, if an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.¹³

17. La Paloma states that construction of La Paloma's generating facility, which is located in the CAISO market, commenced after July 9, 1996. Further, it states that none of the generating capacity owned or controlled by La Paloma's affiliates is located in the CAISO market. In addition, La Paloma states that, to foreclose any doubt about its lack of market power, it performed a generation market power analysis indicating that La Paloma passes the indicative screens in the CAISO market. Accordingly, based on these representations, the Commission finds that La Paloma satisfies the Commission's generation market power standard for the grant of market-based rate authority.

¹¹ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

¹² 18 C.F.R. § 35.27(a) (2005). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

¹³ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69 (2004).

18. La Paloma states that neither it nor its affiliates possess any transmission facilities other than interconnection facilities needed to effect sales from their respective generating facilities. Based on La Paloma's representation, the Commission finds that La Paloma satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

19. La Paloma states that neither it nor its affiliates have the ability to hinder entry into the power generation marketplace. La Paloma states that it and its affiliates are not franchised utilities, have no ability to unilaterally site new generation plants or to block other entities from siting new plant, and do not own or control any natural gas pipelines or local natural gas distribution companies serving the relevant market area or any suppliers of electrical equipment. Further, La Paloma states that neither it nor its affiliates own or control any resources or inputs to power generation that could impede potential competition. Based on these representations, the Commission is satisfied that La Paloma cannot erect barriers to entry.

20. La Paloma states that neither it nor any of its affiliates has a franchised service area. Based on this representation, La Paloma satisfies the Commission's concerns with regard to affiliate abuse.

21. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of part 45.¹⁴ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).¹⁵ Thus, consistent with Order No. 664, La Paloma will be required henceforth to comply with the full requirements of part 45.

22. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

¹⁴ *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 112 FERC ¶ 61,298 at P 34 (2005).

¹⁵ *Id.* at P 36.

greater) market-based power sales during the most recent calendar quarter.¹⁶ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁷

23. La Paloma must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates.¹⁸ As noted above, La Paloma revised its tariff to include the change in status reporting requirement.

24. La Paloma is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁶ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

¹⁷ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁸ See note 3, *Supra*.